



DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Parts 801, 806, and 807

Docket No.: 111012619-1619-01

RIN 0691-AA81

International Services Surveys and Direct Investment Surveys Reporting

AGENCY: Bureau of Economic Analysis

ACTION: Proposed rule; request for comments

SUMMARY: The Bureau of Economic Analysis (BEA) proposes to revise its rules to establish general guidelines for reporting on international trade in services and direct investment surveys provided for by the International Investment and Trade in Services Survey Act (22 U.S.C.

3101 to 3108, (the Act)). In addition to the Act, the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908) provides authority for the international trade in services surveys.

Currently, international trade in services and direct investment surveys are promulgated through separate rulemaking actions. This rule will modify the guidelines to allow such surveys to be issued through notices rather than as more formal rulemakings. The purpose of this rule is to provide a more general framework for collection of data on these surveys that are required, or provided for, by the statutes. The effect of this rule is to simplify and generalize existing regulations governing the procurement of information on international trade in services and direct investment.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. [insert date 60 days from the date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by RIN 0691-AA81, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. For Keyword or ID, enter “EAB-2011-0003.”
- *E-mail:* David.Galler@bea.gov.
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606–2894.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835.

SUPPLEMENTARY INFORMATION:

The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort. The Act specifies that regular data collection programs and surveys, as specified in the Act or as deemed necessary by the Secretary of Commerce pursuant to Executive Order 11961, as amended by Executive Orders 12318 and 12518, shall be

conducted to secure information on international trade in services and on direct investment, including information that may be necessary for computing the international transactions and national income and product accounts and for deriving estimates of direct investment position and of operations of multinational companies.

The existing regulations (15 CFR parts 801 and 806) implementing certain provisions of the Act govern the reporting information on surveys of international trade in services and direct investment and provide detailed instructions to survey respondents on how to report and what forms to complete and submit when responding to the surveys. This method ensures that all potential respondents are notified of the new survey, but the process can hinder the timely gathering of information due to the necessary rulemaking steps.

BEA proposes to revise these regulations to generalize the reporting requirements with respect to these surveys under the Act. Because of the level of detail included in the existing regulations, a rulemaking is required each time a change – such as changes in the survey year for a benchmark survey, the title of a survey, and the reporting threshold for a survey – is made to a survey. For surveys that are conducted on an ongoing basis – quarterly, annually, quinquennially – specific reporting information regarding individual surveys can more efficiently be issued as notices rather than through individual rulemakings. BEA can determine the likely universe of survey respondents through ongoing research of databases and outreach to professional organizations, so the surveys will continue to receive similar coverage and response rates even if they are issued as notices. Finally, there is no requirement in the Act or elsewhere that the reporting requirements and detailed instructions for such surveys be issued following notice and comment rulemaking. Therefore, BEA proposes to remove the current regulations and publish in

the **Federal Register** notices of future surveys of foreign and direct investment in the United States and international trade in services.

If this proposed rule is adopted, notice of specific surveys pertaining to international investment and trade in services and direct investment, including applicable report forms and instructions, would now be separately published in the **Federal Register**. In addition, only respondents notified of these surveys would be required to respond to BEA surveys.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The new rule will affect only BEA's internal procedures regarding how it conducts surveys of international trade in services and direct investment. None of the proposed changes would have a direct effect on any businesses, large or small. Those subject to these surveys will still be required to respond to BEA's requests for information, but the requests themselves will not be subject to notice and comment rulemaking. Therefore, the effect of this proposed rule is to simplify and generalize existing regulations governing the procurement of information on the international trade in

services and direct investment under the Act. Because there would be no impact to small entities as a result of this change to the regulations, the Chief Counsel certified that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

List of subjects in 15 CFR Part 801

Cross-Border transactions, Credit card, Debit card, Economic statistics, Foreign investment in the United States, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements, Travel expenses, U.S. investment abroad.

Dated: December 20, 2011

J. Steven Landefeld,
Director, Bureau of Economic Analysis

For the reasons discussed in the preamble, Parts 801, and 806 of Title 15 of the Code of Federal Regulations are proposed to be revised to read as follows:

PART 801—Surveys of International Trade in Services Between U.S. and Foreign Persons and Surveys of Direct Investment

Sec.

801.1 Purpose.

801.2 Definitions.

801.3 Reporting Requirements.

801.4 Recordkeeping Requirements.

801.5 Confidentiality.

801.6 Penalties Specified by Law.

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101-3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

Source: 42 FR 64315, Dec. 22, 1977 and 51 FR 7772, Mar. 6, 1986, unless otherwise noted.

§801.1 Purpose.

The purpose of this part is to provide general information on international trade in services and direct investment data collection programs and analyses under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 to 3108, as amended) (the Act). The purpose of the Act is to provide for the collection of comprehensive and reliable information pertaining to international investment, including international trade in services and direct investment, and to do so with a minimum of burden on respondents and with no unnecessary duplication of effort.

§801.2 Definitions.

For purposes of the Act and for reporting requirements under this Part:

(a) *United States*, when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign*, when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *United States person* means any person resident in the United States or subject to the jurisdiction of the United States.

(e) *Foreign person* means any person resident outside the United States or subject to the jurisdiction of a country other than the United States.

(f) *Business enterprise* means any organization, association, branch, or venture which exists for profit-making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

(g) *Services* are economic activities whose outputs are other than tangible goods. This term includes, but is not limited to, banking, other financial services, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care.

(h) *International investment* means (1) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by foreign persons of any interest in property in the United States, or of stock, other securities, or short- and long-term debt obligations of a United States person, and (2) the ownership or control, directly or indirectly, by contractual commitment or otherwise, by United States persons of any interest in property outside the United States, or of stock, other securities, or short- and long-term debt obligations of a foreign person.

(i) *Direct investment* means the ownership or control, directly or indirectly, by one person of 10 percent or more of the voting securities of an incorporated business enterprise or an equivalent interest in an unincorporated business enterprise.

§801.3 Reporting Requirements.

(a) Notice of specific reporting requirements, including who is required to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be published by the Director of the Bureau of Economic Analysis in the Federal Register prior to the implementation of a survey.

(b) In accordance with section 3104(b)(2) of title 22 of the United States Code persons notified of these surveys and subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

§801.4 Recordingkeeping Requirements.

In accordance with section 3104(b)(1) of title 22 of the United States Code, persons subject to the jurisdiction of the United States shall maintain any information which is essential for carrying out the surveys and studies provided for by the Act.

§801.5 Confidentiality.

Information collected pursuant to 3104(c) of title 22 of the United States Code

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under §801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§801.6 Penalties.

(a) *Civil Penalties.* Whoever fails to furnish any information required by the Act or to comply with any rule, regulation, order or instruction promulgated under the Act shall be subject to a civil penalty of not less than \$2,500, and not more than \$25,000, and to injunctive relief commanding such person to comply, or both (see 22 U.S.C. 3105(a) and (b)). These civil penalties are subject to inflationary adjustments (15 CFR 6.4.).

(b) *Criminal Penalties.* Whoever willfully fails to submit any information required by the Act or willfully violates any rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who

knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both (see 22 U.S.C. 3105(c)).

PART 806 [RESERVED]

PART 807 [RESERVED]

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